Filed 10/13/09 P. v. Zaragoza CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. LEOPOLDO GUZMAN ZARAGOZA, Defendant and Appellant.	H033910 (Santa Clara County Super. Ct. No. FF722527)

Defendant Leopoldo Guzman Zaragoza was charged by information filed March 28, 2008, with seven counts of aggravated sexual assault of a child under 14 (Pen. Code, former § 269; count 1-7),[1] and one count each of forcible sexual penetration (§ 289, subd. (a)(1); count 8) and lewd conduct on a child aged 14 or 15 (§ 288, subd. (c)(1); count 9). The information further alleged that the offenses in counts 2, 8, and 9 were committed in Santa Clara County, and the remaining offenses were committed in San Benito and Santa Cruz Counties.

On September 2, 2008, defendant filed a motion for substitution of appointed counsel.[2] At the in camera hearing on the motion on September 19, 2008, defendant

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[1] All further statutory references are to the Penal Code.

[2] *People v. Marsden* (1970) 2 Cal.3d 118.

stated that his counsel was not "[l]ooking into the victim," and that he wanted counsel to "come up with a deal." Counsel stated that his investigator had interviewed the victim's mother but his request to interview the victim had been denied by her mother. Counsel further stated that after he discussed an offer of 40 to 48 years with defendant, defendant did not want to pursue further discussions. The court denied defendant's motion to substitute counsel.

On October 15, 2008, defendant appeared with counsel and informed the court that there was a proposed resolution: a first amended information would be filed; defendant would submit the matter to the court on the transcript of the preliminary examination, the exhibits from the preliminary examination, an unredacted copy of the police report, and some school records, pursuant to *Bunnell v. Superior Court* (1975) 13 Cal.3d 592; and defendant's sentence "would be a 40 year minimum." The first amended information was filed charging defendant with seven counts of forcible lewd conduct on a child under the age of 14 (§ 288, subd. (b)(1); counts 1-7), and one count each of forcible sexual penetration (§ 289, subd. (a)(1); count 8) and lewd conduct on a child aged 14 or 15 (§ 288, subd. (c)(1); count 9). The information further alleged that the offenses in counts 8 and 9 were committed in Santa Clara County, and the remaining offenses were committed in San Benito and Santa Cruz counties. After advising defendant of his rights and accepting defendant's waiver of those rights, the court reviewed the exhibits and the preliminary examination transcript.

The Preliminary Examination Evidence

Blanca J. and her daughter, S., lived in Watsonville from 1999 to 2002. They then moved to Hollister and lived there for two years. They moved to Freedom in 2004, and in 2006, when S. was 12 years old, they moved back to Watsonville. Defendant, Blanca's boyfriend, lived with them when they lived in Hollister and in Freedom, and when they moved back to Watsonville. Defendant then moved out about one year later.

S. testified that defendant had "the role of [her] father in [her] household," and that she was afraid of defendant while she was living with him. Defendant yelled at her and hit her when she did not do what he told her to do. He also told her that if she told anybody about his touching her he would just go to jail for three years then get out and kill her.

Counts 1 and 2: Defendant touched S. on her vagina underneath her clothes more than once or twice during the two years they lived in Hollister. He also put his mouth on her vagina and his fingers inside her vagina. The touchings would occur in his bedroom or in his car while Blanca was at work. S. did not do anything when this happened because she was afraid of defendant and afraid that she would get into trouble if she said no.

Counts 3 through 7: The touchings continued after the family moved to Freedom. They occurred in S.'s room or in defendant's room while Blanca was at work. Defendant touched S.'s vagina with his hand and his mouth and he put his fingers inside her vagina. One time, defendant pulled her out of her bunk bed by her hair, put her on the floor, took off her pants, and put his penis inside her vagina. She told him to stop but he did not stop. He slapped her in the face and she started crying, but he continued the touching. One time, defendant touched her vagina with his penis while they were in his room. Another time, when they were in the basement, defendant rubbed her anus with his penis.

Counts 8 and 9: On September 30, 2007, when S. was 14 and defendant no longer lived with Blanca and S., defendant came to the door and told S. to meet him on the side of the house. When she went there, defendant was in his car. She got in and sat in the back seat. He drove up to Mount Madonna County Park. When he parked the car, he got in the back and started touching S. He kissed her, touched her vagina with his hand underneath her clothes, and put his finger inside her vagina. She did not want defendant to do this, but she could not tell him no because she was afraid of him. However, on this

day, a police officer came. Defendant told S. to tell the police officer that she was 17, so she did.

Santa Clara County Sheriff's Deputy Mark Roggia was in Mount Madonna County Park around 5:31 p.m. on September 30, 2007, when he saw defendant's parked car. It appeared that nobody was inside the car but one of the back doors was ajar. When the deputy approached the car, defendant got out of it quickly. Defendant's clothes were disheveled and he appeared to have an erection. S. was lying down on the back seat fully clothed. She told the deputy that she was 17, and defendant gave the deputy a false name and birth date. Eventually, after the deputy was able to identify defendant and S., and S. started crying, S. told the deputy what had happened in the car and what had happened in the past.

Exhibits 1 and 2 are letters from Santa Cruz and San Benito counties authorizing prosecution of defendant in Santa Clara County for the offenses that occurred in those counties. (See § 784.7, subd. (a).)

Verdicts and Sentencing

After reviewing the evidence, the court found defendant guilty of all nine offenses as charged in the amended information beyond a reasonable doubt. On December 23, 2008, the court sentenced defendant to 50 years in state prison. The sentence consists of the middle term of two years on count 9 pursuant to section 1170.1; consecutive terms of six years each on counts 1, 3, 5, 7, and 8, pursuant to section 667.6, subdivision (d); and concurrent terms of six years each on counts 2, 4, and 6, pursuant to section 667.6, subdivision (c). The court granted defendant 518 days of custody credits and imposed a general order of restitution to include, but not limited to, $2,070 to the Victim Compensation Government Claims Board.

This Appeal

Defendant filed a timely notice of appeal and we appointed counsel to represent him in this court. Counsel has filed a brief which states the case and facts but which raises no issues. We notified defendant of his right to submit written argument in his own behalf within 30 days, and he has exercised that right by submitting a letter filed in this court on September 17, 2009.

In the letter, defendant contends that he received a "lack of adequate representation" by his trial counsel, "due to conflict which existed between declarant and counsel"; "the court violated [his] due process, when it failed to appoint [him] with another counsel"; "the court allowed the witness to testify, knowing she had a criminal record and is a very close relative. The witness is a convicted felon"; "the court allowed circumstantial evidence"; "the court allowed her hearsay even though there were no direct witnesses to what she said"; and "police, investigators and prosecutor mishandled and withheld evidence undermining the defense, and then providing false testimony in court."

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record and have concluded that there is no arguable issue on appeal. An appellate court should not find ineffective assistance of counsel unless all facts relevant to that claim have been developed in the record. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 267.) A trial court properly denies a request for substitution of appointed counsel when there is an insufficient showing that the right to the assistance of counsel would be substantially impaired if the request is not granted. (*People v. Marsden*, *supra*, 2 Cal.3d at p. 123.) Circumstantial evidence and hearsay statements are admissible when relevant to prove the corpus delecti of forcible lewd acts upon a child. (See *People v. Alvarez* (2002) 27 Cal.4th 1161, 1171; see also CALCRIM Nos. 223, 1111.) The record on appeal does not support defendant's remaining claims

regarding the criminal record of the witness or the conduct of the police, investigators and prosecutor.

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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McADAMS, J.

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DUFFY, J.